

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DAVID JOHNSON,

Petitioner,

**DECISION AND ORDER**  
10-CV-480A

v.

MICHAEL T. PHILLIPS, in his official  
capacity as Field Director of the Buffalo  
Field Office of Detention and Removal  
Operations, et al.,

Respondents.

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The above-referenced case was referred to Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1). On December 20, 2010, Magistrate Judge Scott filed a Revised Report and Recommendation, recommending that petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2241 be denied.

Petitioner filed objections to the Report and Recommendation on December 22, 2010. Respondents filed a response to petitioner's objections on March 4, 2011. Petitioner filed reply papers on March 11, 2011. The Court has deemed the matter submitted on papers pursuant to Rule 78(b) of the Federal Rules of Civil Procedure.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which

objections have been made. Upon a *de novo* review of the Report and Recommendation, and after reviewing the submissions, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, and for the reasons set forth in Magistrate Judge Scott's Report and Recommendation, petitioner's petition for a writ of habeas corpus (Dkt. No. 1) is denied, but without prejudice. Petitioner may renew his petition if the United States Court of Appeals for the Fourth Circuit ultimately affirms petitioner's order of removal, the authority for continued detention consequently switches to 8 U.S.C. § 1231(a)(1)(B)(ii), and the applicable removal period expires.

The Clerk of the Court is directed to close this case.

SO ORDERED.

*s/ Richard J. Arcara*

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HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE

DATED: April 18, 2011